

IN THE MATTER OF THE VETERINARY PROFESSION ACT, RSA 2000, c. V-2,
AS AMENDED (VPA);

AND IN THE MATTER OF A HEARING INTO THE CONDUCT
OF DR. JUN YANG, A MEMBER OF THE ALBERTA VETERINARY MEDICAL ASSOCIATION (ABVMA);

AND IN THE MATTER OF A PROFESSIONAL CONDUCT HEARING REGARDING THE CONDUCT OF DR.
JUN YANG HELD VIRTUALLY DUE TO THE COVID 19 PANDEMIC;

AND IN THE MATTER OF A COMPLAINT BY THE ABVMA COMPLAINTS DIRECTOR
IN ACCORDANCE WITH SECTION 27.1 OF THE VPA

DECISION OF THE HEARING TRIBUNAL OF THE ABVMA

TAKE NOTICE that a Hearing Tribunal of the ABVMA, properly constituted pursuant to section 9.4 of the VPA, convened a hearing as described below regarding allegations of unprofessional conduct against Dr. Jun Yang set out in an Amended Notice of Hearing dated August 13, 2020.

AND FURTHER TAKE NOTICE that the Hearing Tribunal has made the decision set out below with respect to the allegations of unprofessional conduct noted above.

Hearing Dates: December 2-3, 2020 (via WebEx)

Decision Date: January 6, 2021

Hearing Tribunal: Dr. Grady Barton (Chair)
Dr. John Scholten
Dr. Dagmar Schouten

Appearances: Karen Smith, QC and Nancy Tran – Counsel for the Complaints Director
Dr. Jun Yang – for himself
Joseph Rosselli, QC – Counsel for the Hearing Tribunal

Witnesses: Dr. Phil Buote – Complaints Director
Dr. Tim Keogan – Appointed Investigator
Dr. Ken Lawrence – Expert
Karen Stevenson – Officer, ASPCA
Stuart Dodds – Officer, ASPCA

Exhibits: 1. Notice of Hearing
2. Notice to Attend
3. Statutory Declaration regarding service
4. Bundle of 28 emails
5. Investigation Report dated February 18, 2020

I. INTRODUCTION

[1] The Member, Dr. Jun Yang, has been a registered veterinarian with the ABVMA since 2007.

[2] On April 11, 2018, individuals acting under the authority of the Alberta Society for the Prevention of Cruelty to Animals (ASPCA) and pursuant to a warrant attended at the Member's property located near Sherwood Park, Alberta. They found 39 dead sheep in various stages of decomposition, 71 live sheep, 1 live lama, and 1 live donkey. They found no water source available to the animals except crusted snow and no visible feed source available except for remnants of a hay bale.

[3] As a result of the above attendance at the Member's property and subsequent investigation, the ASPCA charged the Member with three offences under the Animal Protection Act of Alberta:

- "being the owner or person in charge did cause or permit animals, to wit: sheep, to be or continue to be in distress, contrary to Section 2(1) of the *Animal Protection Act* of Alberta;"
- "being the owner or person in charge did cause or permit animals, to wit: sheep, did fail to ensure that the animal had adequate food and water, contrary to Section 2(1)(a) of the *Animal Protection Act* of Alberta;" and
- "being the owner or person in charge did cause or permit animals, to wit: sheep, did fail to provide the animal with adequate care when the animal is wounded or ill, ensure that the animal had adequate food and water, contrary to Section 2(1)(b) of the *Animal Protection Act* of Alberta." [Sic.]

[4] By way of letter dated October 30, 2018, the ABVMA Complaints Director advised the Member of a formal complaint in accordance with Section 27.1 of the VPA. The Member was advised that the three charges noted above were reasonable grounds to believe the Member's conduct constituted unprofessional conduct. The Member was also advised that an investigation in accordance with Section 31 of the VPA would be conducted.

[5] The offences pursuant to the *Animal Protection Act* were stayed. However, the ABVMA investigation proceeded and concluded with a direction that the complaints of unprofessional conduct proceed to a hearing.

II. ALLEGATIONS OF UNPROFESSIONAL CONDUCT

[6] The Hearings Director directed the Member to appear at a Hearing and respond to the following allegations:

Animal Welfare

- 1. That in or about April of 2018, as a registered veterinarian, the Member caused or permitted sheep on his property to be in distress.*
- 2. That in or about April of 2018, as the owner or responsible individual, the Member failed to ensure the sheep on his property had adequate food and water.*
- 3. That in or about April of 2018, the Member failed to provide the sheep on his property with adequate care when the sheep appeared to be in poor physical condition.*
- 4. That the Member allowed the sheep pasturing on his property to suffer physical pain and suffering and overall distress without appropriate veterinary medical intervention.*
- 5. That the Member failed to pay due attention and care to the wellbeing of animals owned or for which he was responsible.*

The above are alleged to constitute unprofessional conduct pursuant to s. 1(n.1)(i), (ii), (x) and/or (xi) of the VPA.

Failure to Respond to the ABVMA

- 6. That the Member failed to reply to correspondence from the ABVMA on October 30th, 2018, January 11th, 2019, April 9th, 2019 and/or January 17th, 2020, requesting a response to the complaint pursuant to section 27.1 of the VPA of October 30th, 2018.*

The above is alleged to constitute unprofessional conduct pursuant to s. 1(n.1)(i), (ii), vi (B), (x) and/or (xi) of the VPA.

Failure to Comply with a Request from an Investigator

- 7. That the Member failed to make himself available for an interview with the ABVMA investigator into the complaint.*

The above is alleged to constitute unprofessional conduct pursuant to s. 1(n.1)(i), (ii), vi (B), (x) and/or (xi) of the VPA.

Leadership

8. That the Member failed to demonstrate leadership with regard to animal welfare.

The above is alleged to constitute unprofessional conduct pursuant to s. 1(n.1)(i), (ii), (x) and/or (xi) of the VPA.

[7] The Hearing Tribunal was therefore required to determine whether the Member's actions, as alleged and disclosed by the evidence, constituted unprofessional conduct. If unprofessional conduct was found, the Hearing Tribunal would then determine the issues of sanction, costs, and publication.

III. PROCEDURAL MATTERS

[8] The member of the public appointed to the Hearing Tribunal – who would have been the fourth member of the Hearing Tribunal – was not capable of carrying out the powers and duties of a member of the Hearing Tribunal. Pursuant to section 9.6(2) of the VPA, the balance of the Hearing Tribunal continued to carry out its powers and duties of this Hearing.

[9] The Member appeared on the first day of the Hearing 35 minutes after the stipulated start time. He elected to proceed without legal counsel.

[10] The Member objected to the proceedings on the basis that the *Animal Protection Act* charges against him were stayed, which had formed the information and grounds starting the ABVMA formal complaint. As such, the Member submitted there was no further requirement to proceed with the Hearing.

[11] Counsel for the Complaints Director submitted that the same facts could give rise to a prosecution under the *Animal Protection Act* in the courts and a complaint against a member under the VPA. Further, counsel for the Complaints Director submitted that the staying of the former does not extinguish the complaint and investigation process under the VPA.

[12] The Hearing Tribunal deliberated and decided that it had authority and jurisdiction, and that these proceedings under the VPA could proceed despite the staying of the *Animal Protection Act* charges.

[13] Throughout the course of the Hearing, the Member did not accept the Hearing Tribunal's decisions on evidentiary and procedural matters, and was persistently argumentative. Ultimately, the Member refused to participate further in the Hearing part way through his cross-examination of the final witness called by the Complaints Director, and advised of his intention to resign from the ABVMA.

[14] In light of the Member's decision to not participate further, the Hearing concluded at the close of evidence and submissions by the Complaints Director.

IV. EVIDENCE

Responding to the Complaints Director and Investigator

[15] Dr. Buote is the ABVMA Complaints Director. After the ABVMA became aware of the charges against the Member, Dr. Buote issued a formal complaint against the Member by way of a letter to him dated October 30, 2018. This letter references the *Animal Protection Act* charges against the Member and finds that they constitute reasonable grounds of unprofessional conduct.

[16] The letter of October 30, 2018 to the Member also advises him that Dr. Tim Keogan was appointed to conduct the investigation, and that the Member was to respond to Dr. Keogan by November 23, 2018.

[17] On January 11, 2019, Dr. Buote wrote a letter to the Member referencing the earlier notice of a formal complaint contained in the letter of October 30, 2018, and noted no response by the Member. Dr. Buote again requested that the Member respond to the formal complaint.

[18] The Member and Dr. Buote then exchanged communications on a number of matters, culminating in Dr. Buote's letter dated April 9, 2019 which, among other things, again asks the Member to respond to the formal complaint which is the subject matter of this Hearing.

[19] The investigation was placed on hold due to the outstanding *Animal Protection Act* charges.

[20] On January 17, 2020, counsel for the Complaints Director wrote a letter to the Member summarizing the status of the *Animal Protection Act* charges, that the investigation under the VPA

was still proceeding, and set out the ramifications of not responding to the formal complaint against him and cooperating with the investigation:

You were notified of a formal complaint under section 27.1 of the Veterinary Profession Act on October 30, 2018 relating to charges against you under the Animal Protection Act. The trial of that matter commenced on November 5, 2019. The ABVMA has been advised that those charges have been stayed.

Notwithstanding the staying of the charges, the ABVMA is continuing to proceed with the investigation of concerns regarding animal welfare issues under the authority of section 27.1 of the Veterinary Profession Act.

You had previously been advised of the complaint on October 30, 2018; January 11, 2019; and April 9, 2019, requesting a response to the complaint.

As you have been advised, the investigation was placed on hold pending the Animal Protection Act charges. Those charges at present are not proceeding and accordingly, the ABVMA is continuing with its investigation. You have been contacted by both the Complaints Director and the investigator advising that you have a responsibility and an opportunity to provide a response to the complaint up to and including January 24, 2020.

In the event that you do not respond to the complaint and make yourself available for an interview with the investigator, we expect that the investigator will be submitting his report to the ABVMA for the appropriate consideration.

You have a responsibility under the Veterinary Profession Act to respond to an investigator and correspondence from the ABVMA and cooperate with an investigation. If you do not provide a response and/or make yourself available for an interview, you may find that there are allegations of failure to cooperate and/or failure to respond to the ABVMA as unprofessional conduct.

Please govern yourself accordingly. We urge you to respond to the complaint and contact the investigator for an interview.

[21] What follows are a number of email exchanges between the Member and various individuals at the ABVMA and counsel for the Complaints Director, which seem to indicate that the Member was attempting to appeal the decision to proceed with the formal complaint and investigation against him because the *Animal Protection Act* charges had been stayed. These communications are, in our view, adequately summarized in the email from counsel for the Complaints Director to the Member dated December 1, 2020:

Your email of 2:20 pm today has been forward to my attention.

Dr. Yang - you have been apprised numerous times of this hearing since August 13 and 14 when you were originally served the documents relating to the hearing.

You have received information relating to the hearing tribunal and the witnesses. The Hearing Tribunal is composed of:

Dr. Barton

Dr Scholten

Dr. Schouten

The witnesses that will be attending are: Dr Buote, Dr. Keogan, Dr. Lawrence, Officers Dodds and Stevenson. All of their statements were provided in the investigation report.

You have been advised numerous times that Council, the President and the Hearings Director will not make any decision to halt these proceedings. If you have preliminary issues - you are to address them at the Hearing. As you have been advised, Council is the appeal body from any decisions of the Hearing Tribunal and will therefore not hear preliminary applications regarding hearing matters. You have been responded to by the Hearings Director and by my office and Dr. Buote with respect to your continuous correspondence to Council.

The hearing is proceeding tomorrow. You have been provided with invites to attend trial runs today. You will need a camera and audio ability to attend. You have again been provided with the link for the hearing within the last hour by my assistant Mackenzie. Any smart phone can access the hearing.

The hearing will be proceeding and the ABVMA will not be agreeing to any adjournment. Please govern yourself accordingly.

[22] Despite the numerous emails the Member sent, there was no evidence at the Hearing that he responded to the substance of the formal complaint under the VPA or submitted to an interview with Dr. Keogan. In particular, there was no response to the substance of the requests contained in the letters to the Member dated October 30, 2018, January 11, 2019, April 9, 2019, and January 17, 2020. There was also no response for an interview contained in several emails Dr. Keogan sent to the Member.

Welfare of Animals Under Member's Care

[23] Despite the difficulty in obtaining information from the Member, Dr. Keogan was able to obtain information relevant to the allegations against the Member from individuals who investigated the *Animal Protection Act* charges.

[24] Dr. Keogan testified at the Hearing that he interviewed the individuals directed by the ASPCA to attend the Member's property to investigate concerns about animal welfare. Dr. Keogan also obtained records from them. His findings were presented in a report entered as an exhibit in these proceedings.

[25] The individuals Dr. Keogan interviewed also appeared as witnesses at the Hearing.

[26] Dr. Ken Lawrence was an expert witness who testified at the Hearing. He is a veterinarian who has assisted with ASPCA investigations into animal abuse for 15 years. On April 11, 2018, he was asked to examine sheep and necropsy dead sheep at the Member's property.

[27] Dr. Lawrence found 39 dead sheep on the Member's property located in fenced pens, an open shelter shed, and outside fenced pens. The carcasses were in various stages of decomposition and internal organs had been consumed by predation.

[28] A pen closest to a house on the property had an open shelter that housed live adult sheep, a llama, a donkey, and several dead sheep. There was no available water and there were remnants of a hay bale. The donkey was palpated and given a 3/9 body condition score.

[29] In another pen, Dr. Lawrence found 28 lambs of 4-6 months of age. There was a building that provided wind protection for these animals, but no food or water available. He was unable to catch any of the lambs for a physical examination. There was a large bag outside of this pen that was nearly empty containing only a couple of gallons of screenings.

[30] Due to the decomposition and predation of the carcasses, only femur samples and a few hearts could be collected from 6 of them. Samples from the carcasses were sent to Prairie Diagnostic Services in Saskatoon, Saskatchewan for bone marrow fat content analysis.

[31] Based on bone marrow fat content of the samples submitted for analysis, 3 sheep showed serous atrophy, one had minimal fat content, and one had adequate bone marrow content.

[32] In a report dated May 5, 2018, Dr. Lawrence states:

Based on the bone marrow fat content and no availability of feed, cause of death was due to malnutrition/starvation. If the serous atrophy and subsequent death was do to chronic/debilitating disease, these animals should have had veterinary attention. The animals that had adequate bone marrow fat content may have died from disease, or from inadequate nutrition and water during the cold winter months that we experienced this past year. Snow was the only source of water. This would be adequate providing the snow cover is not hard, which it was this winter. Sheep cannot source enough water from snow if the pack is hard. Our site examination, on April 11, 2018, even though the weather had warmed up, there was still a firm snow pack. This would have been harder in earlier months. Inadequate hydration and extra calories required in sourcing water by snow can result in dehydration, accompanied with cold weather can lead to hypothermia and death.

[33] Dr. Lawrence's report concludes: "It is my conclusion that these animals were deprived of adequate food, water and veterinary care."

[34] At the hearing, Dr. Lawrence was unequivocal that the animals on the Member's property suffered from pure neglect.

[35] In Dr. Lawrence's opinion, the dead animals would have been in distress. He would not consider 39 dead sheep interspersed amongst live animals as proper disposal. Further, the death of the animals and the scavenging of their carcasses in front of the live animals would have caused them to suffer distress.

[36] Dr. Lawrence said he was surprised and disappointed when he learned the owner of the animals was a veterinarian. In his view, the Member failed to demonstrate leadership in animal welfare.

[37] The Hearing Tribunal accepts Dr. Lawrence's observations, findings, and opinions.

[38] Karen Stevenson has been an ASPCA officer for several years. She also has training and experience as a registered veterinary technologist, working in rural mixed practices, emergency medicine, daytime medicine, and animal control.

[39] Officer Stevenson's first encounter with the Member was with respect to a different concern about animal welfare investigated in May 2017. Officer Stevenson received a call from a member of the public about there being too many animals on the Member's property given the available food. The complainant was also concerned about the animals being thin and that a donkey's feet were overgrown.

[40] Officer Stevenson attended at the Member's property on May 8, 2017 and noted that there were many animals and that the pastures appeared overgrazed. She did not see any dead animals. After several attempts, she spoke with the Member and eventually arranged for an in-person meeting on June 30, 2017. The Member told Officer Stevenson that he had 140 sheep, 8 llamas, and 5 donkeys at about the time of the complaint. However, he had sold or moved many of them by the time of the interview. Officer Stevenson thought the animals on the property were in adequate body condition and that the pastures would recover with fewer animals grazing on them. She noted automatic waterers operated normally. Officer Stevenson concluded there was no any animal welfare issue and concluded her investigation.

[41] During the course of the 2017 investigation, the Member did not disclose he was a veterinarian and in fact told Officer Stevenson he was a cook or chef. She was therefore surprised to learn in the course of the subsequent investigation in 2018 that the Member was a veterinarian.

[42] In 2018, Officer Stevenson assisted with the investigation of the Member's property following another complaint about animal welfare. On April 11, 2018, she attended at the property and saw 39 dead animals there. Her description of the property, pens, and animals – dead and alive – was consistent with Dr. Lawrence's evidence.

[43] Of significance, Officer Stevenson also made note of no water being available for the animals, and that the pens where the live animals were kept had no food.

[44] Stuart Dodds has had a long career in animal protection and welfare. He has worked as an officer with the ASPCA for 22 years, and in England in the same field before that.

[45] Officer Dodds' involvement in this matter began in March 2018 upon receiving a complaint of dead ewes on the Member's property. There was also a complaint that sheep purchased from the Member had the medical condition Orf.

[46] Officer Dodds visited the Member's property on March 28, 2018. At this time he noticed in excess of 20 dead sheep on the property. He tried calling the Member and left messages for him, eventually being told that the Member was planning to sell some of his ewes.

[47] Officer Dodds arranged for a search warrant and inspected the Member's property on April 11, 2018. At this time, he observed 39 dead sheep and 71 live ones. He found that one corral had some food and no water, whereas another had no food or water.

[48] Officer Dodds later spoke with the Member on the phone and had an in-person meeting with him on the property on April 18, 2018. The Member told Officer Dodds that the deaths of the animals were due to ill health and old age.

[49] Photographs of the Member's property and of the dead animals were taken and were part of Dr. Keogan's Investigation Report (Exhibit 5).

[50] Of note, the witnesses who attended the Member's property found evidence of veterinary supplies, which led them to conclude the Member was a veterinarian. His status as such surprised the witnesses given what they observed on the farm and their observations of the animals' welfare.

[51] All of the witnesses who gave oral evidence at the Hearing did so in a balanced, confident, and professional manner. They were all credible witnesses.

Member's Response to Allegations

[52] As noted above, the Member decided during his cross-examination of the final witness called on behalf of the Complaints Director to refuse to participate any further in the Hearing. The

Member did not give testimony on his own behalf, present other evidence, or make submissions in response to the allegations.

V. FINDINGS WITH RESPECT TO ALLEGATIONS

[53] It is alleged the Member's conduct constitutes unprofessional conduct under the following provisions of the VPA:

(n.1) "unprofessional conduct" means any or all of the following, whether or not it is disgraceful or dishonourable:

(i) displaying a lack of knowledge of or lack of skill or judgment in the practice of veterinary medicine;

...

(ii) contravening this Act or the regulations;

...

(vi) failing or refusing...

...

(B) to comply with a request of or to co-operate with an investigator,

...

(x) conduct that harms the public while carrying on the practice of veterinary medicine;

(xi) conduct that harms the integrity of the profession;

[54] In addition, section 16.1 of *Veterinary Profession General Regulation, Alta Reg 44/1986* sets out certain duties required of veterinarians:

16.1 Every registered veterinarian, registered veterinary technologist, permit holder, student and other member of the Association

(a) should be dedicated to the benefit of society, the conservation of animal resources and the relief of the suffering of animals,

(b) shall serve clients, members of the public and fellow members of the profession with integrity,

(c) owes a duty to clients to be competent to perform the services undertaken,

(d) should serve clients in a conscientious, diligent and efficient manner and provide a quality of service at least equal to that expected from a competent member of the profession,

(e) shall be candid and honest when advising clients,

(f) is duty-bound to hold in strict confidence all information acquired in the course of professional relationships with clients, and should not divulge that information unless

(i) expressly or implicitly authorized by the client or required to do so by law, or

(ii) it is information respecting inhumane or negligent treatment of an animal, in which case the registered veterinarian, registered veterinary technologist, permit holder or student may report the information to a peace officer as defined in the Animal Protection Act.

(g) should be merciful and humane, preventing needless suffering among animals,

(h) should assist in maintaining the integrity of the profession and participate in the activities of the profession, and

(i) should maintain conduct characterized by courtesy and good faith, with a mutual interchange of counsel and assistance.

[55] The Hearing Tribunal decides with respect to each of the specific allegations of unprofessional conduct against the Member as follows.

Animal Welfare

1. That in or about April of 2018, as a registered veterinarian, the Member caused or permitted sheep on his property to be in distress.

[56] In addition to the common meaning, guidance on what “distress” means can be found in section 1(2) of the *Animal Protection Act* (RSA 2000, c A-41):

(2) For the purposes of this Act, an animal is in distress if it is

(a) deprived of adequate shelter, ventilation, space, food, water or veterinary care or reasonable protection from injurious heat or cold,

(b) injured, sick, in pain or suffering, or

(c) abused or subjected to undue hardship, privation or neglect.

[57] The *Animal Protection Act* also sets out prohibitions and duties with respect to the welfare of animals, which apply to all persons including the Member:

Prohibition against causing distress

2(1) No person shall cause or permit an animal of which the person is the owner or the person in charge to be or to continue to be in distress.

(1.1) No person shall cause an animal to be in distress.

(2) This section does not apply if the distress results from an activity carried on in accordance with the regulations or in accordance with reasonable and generally accepted practices of animal care, management, husbandry, hunting, fishing, trapping, pest control or slaughter.

Animal care duties

2.1 A person who owns or is in charge of an animal

(a) must ensure that the animal has adequate food and water,

(b) must provide the animal with adequate care when the animal is wounded or ill,

*(c) must provide the animal with reasonable protection from injurious heat or cold,
and*

(d) must provide the animal with adequate shelter, ventilation and space.

[58] The complaint the ASPCA received in March 2018 led to a search warrant and inspection of the Member's property on April 11, 2018. The individuals who conducted the inspection – Officer Stevenson, Officer Dodds, and Dr. Lawrence – observed 39 dead and decomposing sheep amongst 71 live ones. They were all of the view that the live animals were deprived of and were suffering from inadequate food and water.

[59] Dr. Lawrence's observations and subsequent investigations into samples taken from the dead animals lead him to the conclusions that the cause of death of the sheep on the Member's property was due to malnutrition/starvation and that the animals were deprived of adequate food, water, and veterinary care.

[60] Of note, there was no evidence to indicate that the distress resulted from any of the activities in section 2(2) of the *Animal Protection Act*, reproduced above.

[61] Based on the evidence, there is no question that the animals on the Member's property were owned by him, and under his care and control.

[62] The evidence establishes beyond a balance of probabilities that the Member failed to provide animals he owned and under his care with adequate water, food, and veterinary care. The evidence also establishes beyond a balance of probabilities that this neglect led to a great proportion of the animals under the Member's ownership and care to suffer physical pain, distress, and death.

[63] The allegation that in or about April of 2018, as a registered veterinarian, the Member caused or permitted sheep on his property to be in distress is proven beyond a balance of probabilities

2. That in or about April of 2018, as the owner or responsible individual, the Member failed to ensure the sheep on his property had adequate food and water.

[64] The Hearing Tribunal's findings related to Allegation 1 also apply to Allegation 2.

[65] For reasons stated above, the allegation that in or about April of 2018, as a registered veterinarian, the Member caused or permitted sheep on his property to be in distress is proven beyond a balance of probabilities.

3. That in or about April of 2018, the Member failed to provide the sheep on his property with adequate care when the sheep appeared to be in poor physical condition.

[66] The Hearing Tribunal interprets this allegation to relate to the live sheep found on the Member's property, as it has been established that the dead sheep did not receive adequate care.

[67] Although a logical inference could be drawn that the same lack of care also afflicted the live sheep, there was no direct evidence that they were in poor physical condition. This is probably because the individuals attending the Member's property were not able to catch the animals to conduct a physical examination.

[68] On a balance of probabilities, this allegation against the Member is not proven.

4. That the Member allowed the sheep pasturing on his property to suffer physical pain and suffering and overall distress without appropriate veterinary medical intervention.

[69] The ASPCA investigation and attendance at the Member's property on April 11, 2018 found the remains of 39 dead sheep, ranging in age from new-born lambs to adults. Most of the carcasses were in various stages of decomposition and there was evidence of predation.

[70] Given the high number of dead sheep found on his property, the Member as a veterinarian ought to have met the standards expected in terms of monitoring the health of the animals, investigating their medical condition as required, and taking steps to alleviate any suffering and distress.

[71] There was no evidence that the Member or anyone on his behalf provided or arranged for adequate veterinary care of the animals that were on his property and under his care.

[72] Further, there was no evidence that the Member or anyone on his behalf conducted any investigation into the cause of the deaths of the animals, or took any steps to dispose of the dead carcasses.

[73] The allegation that the Member allowed the sheep pasturing on his property to suffer physical pain and suffering and overall distress without appropriate veterinary medical intervention is proven beyond a balance of probabilities.

5. That the Member failed to pay due attention and care to the wellbeing of animals owned or for which he was responsible.

[74] The evidence was clear that the Member owned and was responsible for the animals on his property. Therefore, he was responsible to pay due attention and care to their wellbeing.

[75] The animals' wellbeing encompasses keeping them from distress, as meant by the ordinary use of this term and as defined in the *Animal Protection Act* (as cited earlier in this decision).

[76] As already discussed earlier in this decision, facts relevant to the animals' wellbeing in this matter include:

- 39 out of the 110 sheep that were found on the Member's property were dead;

- the carcasses of the dead animals were found in varying degrees of decomposition, intermingled with live animals in their pens, and some scavenged by other animals;
- there was inadequate food and water available.

[77] The evidence establishes that the animals the Member was responsible for were neglected, deprived of food, water, and veterinary care. This led to the animals' starvation, dehydration, pain, suffering, and death.

[78] The allegation that the Member failed to pay due attention and care to the wellbeing of animals owned or for which he was responsible for is proven beyond a balance of probabilities.

Failure to Respond to the ABVMA

6. That the Member failed to reply to correspondence from the ABVMA on October 30th, 2018, January 11th, 2019, April 9th, 2019 and/or January 17th, 2020, requesting a response to the complaint pursuant to section 27.1 of the VPA of October 30th, 2018.

[79] The testimony of Dr. Buote establishes that the Member never provided an adequate response to the complaint as requested in correspondence from the ABVMA dated October 30, 2018, January 11, 2019, April 9, 2019, and January 17, 2020.

[80] The evidence establishes beyond a balance of probabilities that the Member failed to respond to the formal complaint against him issued by the Complaints Director of the ABVMA.

Failure to Comply with a Request from an Investigator

7. That the Member failed to make himself available for an interview with the ABVMA investigator into the complaint.

[81] The evidence establishes that the Member did not respond to numerous requests to make himself available for an interview with respect to the complaint.

[82] In addition to the letters referenced with respect to Allegation 6, the Member failed to respond to requests to communicate about the complaint from the duly appointed investigator Dr. Keogan, including the following communications:

- Dr. Keogan's email sent February 19, 2019;

- Dr. Keogan's follow up email sent February 25, 2019, to which the Member responded indicating he would not be communicating further;
- Dr. Keogan's attempt to discuss the complaint in person at the Sherwood Park courts building;
- Dr. Keogan's email sent December 9, 2019 advising the Member that the investigation was resuming and requesting an interview;
- Dr. Keogan's follow-up email to the above sent December 16, 2019, to which the Member responded on January 11, 2020 that he believed the investigation was terminated;
- Dr. Keogan's email sent January 13, 2020 advising the Member that the investigation was not terminated and again asking if the Member will make himself available for an interview;
- Dr. Buote's email sent to the Member on January 13, 2020 in response to his of the same date, advising the Member that Dr. Keogan had been attempting to contact the Member to arrange for an interview, and urging the Member to do so and cooperate with the investigation. This email also advised the Member that "failure of any member to reply promptly and appropriately to any letter from the Association and failure to comply with the request of or co-operate with an investigation may result in allegations and/or findings of unprofessional conduct; "and
- Dr. Buote's email sent to the Member on January 16, 2020 encouraging the Member to contact Dr. Keogan and cooperate with the investigation, and further advising the Member that failing to do so "may constitute an allegation or finding of unprofessional conduct."

[83] During the Hearing the Member did not present his position on the substance of the allegations against him, and at the end of the morning session on December 3, 2020 the Member refused to participate in the Hearing any further.

[84] The evidence establishes beyond a balance of probabilities that the Member failed to make himself available for an interview with Dr. Keogan, who the Hearing Tribunal finds was duly appointed to investigate the Member with respect to the formal complaint.

Leadership

8. That the Member failed to demonstrate leadership with regard to animal welfare.

[85] There is a high expectation placed on veterinarians as leaders in animal welfare. Veterinarians are the profession with the most training in animal care, wellbeing, and husbandry.

[86] The Member did not disclose to the ASPCA officer Ms. Stevenson in 2017 that he was a veterinarian and may have even misrepresented his occupation.

[87] During their investigation at the Member's property in 2018, the ASPCA officers were still unaware that the animals were owned by a veterinarian until near the end of their inspection of the property. At that point, the ASPCA investigators were surprised and disappointed to learn that the Member was a veterinarian given their observations of the dead and live animals found at the Member's property. Dr. Lawrence had a similar reaction upon learning that the Member was a veterinarian.

[88] The Hearing Tribunal finds it extremely concerning that the animals found on the Member's property were found to have suffered and died in such deplorable conditions. The public would justifiably expect the animals' veterinarian owner to provide them with humane care and take steps to avoid unnecessary distress and suffering.

[89] The Member's conduct with his own animals calls into question his professional integrity and leadership as a member representing the profession.

[90] In light of the Hearing Tribunal's findings related to the balance of the allegations, the evidence proves beyond a balance of probabilities that the Member failed to demonstrate leadership with regard to animal welfare.

VI. CONCLUSION AND ORDER

[91] The Hearing Tribunal finds that Allegations 1, 2, 4 and 5 are proven and as such constitute unprofessional conduct pursuant to the following sections of the VPA:

- s. 1(n.1)(i), as the Member's conduct displayed a lack of knowledge, skill, and judgment in the practice of veterinary medicine;
- s.1(n.1)(ii), as the Member's conduct contravened section 16.1 of the VPA *General Regulation*, namely the following sections: 16.1 (a) for failing to be dedicated to the relief of suffering of animals; and 16.1(g) for failing to be merciful and humane, preventing needless suffering among animals.

[92] The Hearing Tribunal finds that Allegation 3 against the Member is not proven.

[93] The Hearing Tribunal finds that Allegations 6 and 7 are proven and as such constitute unprofessional conduct pursuant to the following sections of the VPA:

- s.1(n.1)(ii), as the Member's conduct contravened section 16.1 of the VPA General Regulation, namely section 16.1 (h) for failing to assist in maintaining the integrity of the profession and participate in the activities of the profession;
- s. 1(n.1)(vi)(B), as the Member failed or refused to comply with a request of or to co-operate with an investigator; and
- s.1(n.1)(xi), as the Member's conduct harmed the integrity of the profession.

[94] The Hearing Tribunal finds that Allegation 8 is proven and as such constitutes unprofessional conduct pursuant to the following sections of the VPA:

- s.1(n.1)(ii), as the Member's conduct contravened section 16.1 of the VPA General Regulation, namely section 16.1 (h) for failing to assist in maintaining the integrity of the profession; and
- s.1(n.1)(xi), as the Member's conduct harmed the integrity of the profession.

[95] The Hearing Tribunal directs that a half-day hearing via video conference be held as soon as can be scheduled to receive submissions on the issues of sanction, costs, and publication.

THE HEARING TRIBUNAL

Dr. Grady Barton, Chair

Authorized to sign for Dr. John Scholten

Authorized to sign for Dr. Dagmar Schouten